

# **EXHIBIT 96**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

23 CV 1346 (JSR)

DO HYEONG KWON and TERRAFORM  
LABS PTE LTD.,

Defendants.

Oral Argument

New York, N.Y.  
June 15, 2023  
2:40 p.m.

Before:

HON. JED S. RAKOFF,

District Judge

APPEARANCES

DEVON STAREN  
JAMES P. CONNOR  
LAURA E. MEEHAN  
CHRISTOPHER J. CARNEY  
Attorneys for Plaintiff

DENTONS US LLP  
Attorneys for Defendants  
BY: DOUGLAS W. HENKIN  
DAVID L. KORNBLAU  
CHARLES M. FARRELL  
ALYSSA LANDOW

1 by Congress in the 1933 and 1934 Acts, exempt from the same  
2 investment contract analysis that has been applied across a  
3 range of technologies, industries, and businesses since *Howey*  
4 was decided in 1946.

5 Your Honor, we do not agree. The investment contract  
6 analysis has been applied to cattle embryos, to basketball  
7 NFTs, to certificates of deposits, pay phones, condominiums,  
8 supersonic dental products, and whiskey barrel receipts. There  
9 is nothing special about the asset.

10 The question, when you are evaluating whether  
11 something is an investment contract, is how it was offered,  
12 marketed, promoted, and sold.

13 THE COURT: All right. That's what I want to focus on  
14 because -- and I don't mean to pass over their important  
15 arguments on other matters. But why is this a contract, let  
16 alone an investment contract?

17 MS. STAREN: Your Honor, we disagree with the  
18 defendants. We don't believe that there is a requirement of a  
19 formal contract, as your Honor correctly pointed out. *Howey*  
20 itself expressly applied the investment contract analysis to  
21 any contract, transaction, or scheme. I would also --

22 THE COURT: Funny use of words, however. There is  
23 that language in *Howey*, but, on the other hand, the actual term  
24 in the law is investment contract. So how can a scheme, for  
25 example, be an investment contract unless it's a scheme to

1 promote an investment contract?

2 MS. STAREN: Your Honor, I think that the -- again,  
3 the focus sort of goes back on what is an investment contract.  
4 And, again, it goes back to how it is marketed, offered, and  
5 sold. What are the promises, understandings, inducements,  
6 expectations, and economic realities that surround the offer of  
7 the asset.

8 As I mentioned, the investment contract analysis has  
9 been applied to a range of assets. In every situation, the  
10 asset itself is virtually irrelevant. You can offer gold or  
11 coins or cattle embryo, which in and of themselves are not  
12 securities. But when you offer them in conjunction with a  
13 promise of the potential for profits, and you offer them as an  
14 investment in a common enterprise, and the expectation is that  
15 the investors will get their returns from the efforts of the  
16 promoters or the efforts of others, then you have an investment  
17 contract, and it doesn't really matter.

18 THE COURT: If I purchase a NST coin for a dollar a  
19 coin and all I'm being told immediately in my hypothetical is,  
20 we will make sure that it's always kept at a dollar, so you can  
21 use it to buy anything you want digitally, and you won't have  
22 to worry that it will be worth only 95 cents. It will be worth  
23 a dollar.

24 Is that alone an investment contract?

25 MS. STAREN: No, your Honor. I think --

1 THE COURT: What makes this then an investment  
2 contract?

3 MS. STAREN: What makes UST an investment contract is,  
4 again, the way that it was marketed, offered, and sold. And it  
5 was offered and marketed as a way to invest in the Anchor  
6 protocol.

7 And, your Honor, the defendants are correct, that the  
8 Anchor protocol didn't necessarily exist at the time that the  
9 defendants started to market UST together with the Anchor  
10 protocol. But it is a review that that actually doesn't  
11 matter.

12 Because when you evaluate an investment contract, what  
13 you are evaluating is, what were the promises being made to the  
14 purchaser of that asset? If they were being promised the  
15 potential for profits, a reasonable expectation of profits that  
16 would derive from the efforts of others, then it is an  
17 investment contract at the time that offer is made, even if the  
18 ultimate thing doesn't exist.

19 THE COURT: I hear what you are saying. Translating  
20 it into the facts of this case, are you saying that what made  
21 these purchases of crypto coins an investment contract was the  
22 promise that you could utilize them to make a profit through  
23 the efforts of others by deploying them into other names, for  
24 lack of a better word. Is that the basic argument? Do I have  
25 that right?

1 MS. STAREN: With respect to UST, yes. It was the  
2 promise that if you buy UST, you will have an opportunity to  
3 stake it in the Anchor protocol and get up to 20 percent  
4 returns.

5 THE COURT: I thought you had alleged that that's what  
6 most people did, although your adversary seemed to be  
7 suggesting some nuance there.

8 MS. STAREN: We did allege, just because you can only  
9 pick a number from a particular point in time. We picked the  
10 number that existed at the point just before the Terraform  
11 market crashed in May of 2022. At that point in time,  
12 approximately --

13 THE COURT: Of course on a motion to dismiss I have to  
14 take every reasonable inference in your favor, so the inference  
15 would be that's what most people did.

16 MS. STAREN: Yes, your Honor. Although, let me just  
17 be clear, that the evaluation of what the expectation was is  
18 not necessarily based on what any individual investor may have  
19 intended at any point in time. We think that's an important  
20 data point.

21 THE COURT: That's fair enough. But aren't you also  
22 arguing that, nevertheless, the fact that most people did do  
23 this showed their understanding from the getgo that this was  
24 really an investment?

25 MS. STAREN: Yes, your Honor.

1 THE COURT: Go ahead.

2 MS. STAREN: I'd like to go back and talk about the  
3 other tokens at issue here.

4 Obviously, UST, we did allege that it was marketed  
5 together with the Anchor protocol and could earn up to 20  
6 percent returns. This was actually a huge motivating factor  
7 for a number of retail investors. Countless retail investors  
8 bought in and ended up losing the bulk of their investment when  
9 the Terraform market crashed in May of 2022.

10 The same analysis applies to LUNA. LUNA is an  
11 investment contract because it involves an investment in a  
12 common enterprise with an expectation of profits to be derived  
13 from the efforts of others. Specifically, we would point to  
14 statements made by Do Kwon to LUNA holders on Twitter where he  
15 tells people that LUNA grows as the ecosystem grows, quote, and  
16 that to profit, a LUNA holder could simply, quote, sit back and  
17 watch me kick ass.

18 And the same goes for the MIR token. Defendants told  
19 investors that MIR tokens would increase in value as the Mirror  
20 protocol increased, and defendants promised investors that they  
21 would support and promote the Mirror protocol in order to  
22 generate that demand.

23 Moving on to the unregistered offerings, your Honor,  
24 we have clearly alleged that the defendants engaged in a public  
25 offering of its securities.